

ORIGINAL

In the United States Court of Federal Claims

No. 12-260 C

(Filed March 8, 2013)

FILED

MAR 8 2013

U.S. COURT OF
FEDERAL CLAIMS

JOHN CROAK,

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Pro Se Plaintiff,

*

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v.

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THE UNITED STATES,

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Defendant.

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ORDER

On March 1, 2013, the Clerk's Office received a submission from plaintiff in this matter. The Clerk's Office stated the submission from plaintiff was defective because (1) proof of service was missing, pursuant to Rule 5.3 of the Rules of the United States Court of Federal Claims (RCFC); (2) copies were missing, pursuant to RCFC 5.5(d)(2); (3) the Judge's name was not on the filing, *see* RCFC 5.5(g); and (4) there is no provision in the rules for the filing of this item. The matter was referred to the undersigned for a ruling.

The complaint in this case was filed on April 19, 2012. On August 15, 2012, defendant filed a motion to dismiss this case pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the United States Court of Federal Claims. (RCFC). Plaintiff failed to respond to the government's motion in a timely fashion and, by order dated October 10, 2012, the court allowed Mr. Croak additional time, until November 21, 2012, to respond to the motion.

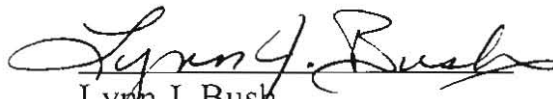
On November 16, 2012, plaintiff submitted a written notice, informing the court that he had not been aware of the government's motion to dismiss until October 15, 2012 and had not actually received hard copies of the motion to

dismiss until mid-October. As a result of this notice, the court gave plaintiff substantial leeway with regard to the missed filing deadline, both because plaintiff is appearing *pro se* and because it appeared that Mr. Croak might not have received the government's motion to dismiss because he was scheduled to be aboard a United States naval ship until approximately October 17, 2012.

By January 31, 2013, the court, having heard nothing further from plaintiff, issued a Show Cause Order directing Mr. Croak to show cause, no later than March 1, 2013, why his complaint should not be dismissed for failure to prosecute pursuant to RCFC 41(b). On March 1, 2013, the Clerk's Office received a one sentence submission from plaintiff which stated: "The plaintiff never received dismissal order from the Court." The Clerk's Office shall file the submission as a notice to the court.

It is this court's view that plaintiff, having been afforded more than ample opportunity to respond to the government's motion to dismiss and having declined to do so, has forfeited his right to any further pursuit of his claim against the United States. Accordingly, it is hereby **ORDERED** that

- (1) The Clerk's Office shall **FILE** plaintiff's submission, received on March 1, 2013, as a Notice filed by leave of the court as of the date of this order; and
- (2) Pursuant to RCFC 41(b), the Clerk's Office is directed to **DISMISS** plaintiff's complaint, with prejudice, for failure to prosecute.


Lynn J. Bush
Judge